THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.215 OF 2007

DATED: 01-03-2007

BETWEEN

G. Venkatesh, S/o. G. Nagaiah,
R/o. Madanapalli, Chittoor District
and another.

...PETITIONERS

AND

The Commissioner of Prohibition & Excise,
Andhra Pradesh, Hyderabad and others.

...RESPONDENTS

ORDER:

The matter has been finally heard at the interlocutory stage at the consent of all the parties and the writ petition itself is disposed of.

2. Heard Sri K. Raghuveer Reddy, learned counsel for the petitioners, learned Government Pleader for Prohibition and Excise for the respondents 1 to 3 and Sri M.V. Pratap Reddy, learned counsel for the fourth respondent.

3. Petitioners are the successful tenderers and licencees in respect of shops at Sl.Nos.57 and 58 of Gazette notification dated 27.05.2006 situated at Ward Nos.34 and 35 of Madanapalli Municipality and Mandal, notified by District Collector, Chittoor, who is the auctioning authority to auction the rights to sell Indian made Foreign Liquor/Indian Liquor by shops, under Rule 5 of the Andhra Pradesh Excise (Lease of Right of Selling by Shops and Conditions of Licences) Rules, 2005 (for short 'the Shop Rules'). The first petitioner, who is the licencee in respect of Shop No.57 of Ward No.34 of

Madanapalli Municipality and Mandal, offered highest bid of Rs.22,55,255/- and the second petitioner, who is the licencee in respect of Shop No.58 of Ward No.35 of Madanapalli Municipality and Mandal, also offered the same amount of highest bid. The petitioners being the auction purchasers were granted licences in Form A-4 to sell Indian Made Foreign Liquor and Foreign Liquor by Shop at Gazette Sl.Nos.57 and 58 for the lease period from 01.07.2006 to 30.06.2008 in premises bearing D.No.III-146-14-5-A and D.No.II-250-61-1-A of Madanapalli Municipality and Mandal to the petitioners respectively.

4. It is stated that in respect of various mandals, municipalities and towns of Chittoor District a total of 458 shops have been notified vide Gazette Notification dated 27.05.2006 and 12 shops have been notified in Madanapalli Municipality at Sl.Nos.56 to 67. The shops have been notified municipality/mandal and rural areas wise. In respect of Puthalapattu Mandal only 7 shops have been notified at Sl.Nos.161 to 167. The Shop at Sl.No.165 of Puthalapattu Mandal located at Rangampeta Cross (Shop – 2) could not be disposed of as nobody offered more than the notified upset price of Rs.13,99,998/-. Therefore, the said shop has been notified again by the auctioning authority, the District Collector, Chittoor District, vide Gazette notification dated 16.12.2006 for opening a shop at Neerugantivari Palli, Ward No.35 of Mandanapalli Municipality notifying the upset price at Rs.10,03,561/-. It is not in dispute that aforesaid shop was originally notified at Sl.No.165 of Puthalapattu Mandal vide Gazette notification dated 27.05.2006 but as per the sanction of the first respondent the second respondent issued notification under Rule 5 of the Shop Rules vide Gazette notification dated 16.12.2006 and the fourth respondent became the auction purchaser in respect of the said shop by offering the highest bid of Rs.10,03,561/-; accordingly the licence bearing No.165/2006-08 in Form 4-A was granted in favour of the fourth respondent to sell Indian Made Foreign Liquor and Foreign Liquor by shop at Sl.No.165 in respect of the relocated

premises bearing D.No.II-250-67-B Neerugantivari Palli, Madanapalli Town, which is at Ward No.35. Questioning the said action this writ petition is filed.

5. It is the case of the petitioners that the aforesaid shop in respect of which license has been granted in favour of the fourth respondent, is quite opposite to the shop of the first petitioner and existing in the same locality/ward of the second petitioner. The shop of the second petitioner is situated at D.No.II-250-61-I-A whereas the shop of the fourth respondent is situated as D.No.II-250-67-B of Madanapalli town and municipality. The shops of the second petitioner and the fourth respondent are at the same Ward No.35 and the shops of the first petitioner and the fourth respondent are situated quite opposite to one another on either side of the road. Therefore, the only question that arises for consideration is as to whether the respondents are entitled under the Shop Rules to relocate the shop notified in respect of one Mandal and bring it within the area/locality of the shops of the petitioners situated in another mandal/municipality.

6. Under Section 15 of the Andhra Pradesh Excise Act, 1968 (for short 'the Act') no person shall sell or buy any intoxicant except under the authority and in accordance with the terms and conditions of a licence granted under the Act. Under Section 17 of the Act the Government alone has got exclusive privilege to grant lease or licence for manufacturing, supplying and selling the Indian made Foreign Liquor by shop or by bar etc. Therefore, selling and buying of Indian Made Foreign Liquor, without the rights being conferred to purchase and sell, is prohibited and also attracts penal provisions. No private individual has got any fundamental right to trade in liquor except otherwise in accordance with the provisions of the Act and the Rules made thereunder. The State of Andhra Pradesh formulated the Shop Rules vide G.O.Ms.No.998 Revenue (Excise II) dated 24.05.2005 called the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005.

An ‘Auction Purchaser’ means a person whose tender is accepted by the Auctioning Authority. The ‘Highest Tenderer’ means a person who offers the highest lease amount by tender. ‘Lease Amount’ means the amount payable in respect of a shop a part of sum in consideration of the grant of lease payable under Section 23 read with Section 17 of the Act.

7. Under Rule 3 of the Shop Rules the grant of lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders form the public after due notification.

Under Rule 4 the Commissioner of Prohibition and Excise having due regard to requirement, public order, health and safety and other factors as he thinks fit, may fix the number of shops to be established in an area/locality before the publication of auction notice under

Rule 5. Under Rule 5 the auctioning authority where it is proposed to grant the lease for sale of Indian Liquor and Foreign Liquor by shop shall issue a notification containing the particulars; Serial Number and the name of the area/locality where the shop will be established.

Then the right to sell Indian made foreign liquor and foreign liquor may have to be auctioned shop wise as notified in the District Gazette. If any person offers the bid amount higher than the upset price and if he is declared as the highest bidder, he shall fulfill certain formalities of depositing certain amount in the manner specified under the Shop Rules, otherwise the said shop would be put to re-auction in case of failure to deposit the money under Rule 20. If any of the shops could not be disposed of in the auction or where the lease already granted is cancelled and the same could not be re-auctioned for any reason it is open for the Andhra Pradesh Beverages Corporation Limited (APBCL) to sell the liquor at the said outlet in the notified place as contemplated under Rule 21.

8. It is not open even for the successful tenderer to locate the shop anywhere he wants within the notified area/locality, however, such selection of the shop shall be in conformity with Rule 27 of the Rules, which would be

at least 100 meters away from the places of Public Worship, Educational Institutions, Hospitals and 50 meters away from Highways. Under Rule 29 the leaseholder shall sell the liquor only at the premises specified in the licence but no change or alteration of the licenced premises shall be made nor the licensed premises be shifted elsewhere. However, under Rule 29(3) the Commissioner may for valid reasons recorded in writing permit shifting of the licenced premises subject to payment of 1% of the lease amount or on collection of Rs.25,000/- whichever is higher within the same Mandal/Municipality/Municipal Corporation without affecting the total number of notified shops in the municipality.

9. I am of the opinion that there is no provision under the Shop Rules permitting the shifting of the shop even by the Commissioner from one Mandal to another. Therefore, the Shop Rules go to show that relocation of the shop originally notified at Sl.No.165 of Rangampeta Cross of Puthalapttu Mandal to Ward No.35 of Madanapalli Municipality of Madanapalli Mandal vide Gazette Notification dated 16.12.2006 issued by the second respondent and the consequential action of grant of licence in favour of the fourth respondent is illegal and unsustainable. The object of issuing the Gazette notification prescribing the number of shops, location, upset price etc. is to give an indication to the auction purchaser to offer highest bids after taking into account various relevant factors. Each of the petitioners offered Rs.22,55,255/-, which was the upset price fixed for the shops of the petitioners, taking into account the number of shops, location etc. It is not in dispute that the entire 12 shops of Madanapalli Municipality and Mandal have been disposed of and once the shops notified have been disposed of it is not even permissible to the highest bidder of one Mandal to get his shop relocated in another Mandal except otherwise for the reasons recorded in writing and after collection of Rs.25,000/- as stated above. However, there is no provision to shift the shop from one mandal to another or from one municipality to another. If any of the shops could not be disposed of it is for

the APBCL to sell liquor at the said outlet in the notified area.

If the said action of the respondents to relocate the shop is permitted there would be unhealthy competition leading to relocation of shops from an area, where there are lesser sales, to another area, where there are higher sales. However, the location and upset price has been notified so as to enable the auction purchasers to take into account all the relevant factors and offer their bids. Therefore, there is no justification on the part of the respondents 1 to3 to relocate the indisposed shops to some other Mandal or locality.

10. At this stage, it is also contended that the petitioners are entitled for refund of the average proportionate lease amount in respect of the period of lease granted to the fourth respondent.

I am of the opinion that such a contention is beyond the scope of the writ petition. However, it is always open for the writ petitioners and the fourth respondent to work out their remedies in accordance with law. It is also open for the official respondents to take appropriate steps to relocate the shop of the fourth respondent from Madanapalli Mandal to the originally notified location i.e. Puthalapattu Mandal so as to safeguard the Government revenue by permitting the fourth respondent to carry on his business at the originally notified location in Puthalapattu Mandal or to re-dispose the said shop or by way of selling liquor at the originally notified outlet through APBCL.

For the aforesaid reasons, the writ petition is accordingly allowed as prayed for. There shall be no order as to costs.

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V. ESWARAIAH, J

March 1, 2007
Note: LR Copy to be marked
(**B/o**)
DSK